

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BYTEMARK, INC., <div style="text-align: center;"><i>Plaintiff,</i></div> v. MASABI LTD., <div style="text-align: center;"><i>Defendant.</i></div>	§ § § § § § § § § §	Case No. 2:16-CV-00543-JRG-RSP
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REPORT AND RECOMMENDATION

Before the Court is Defendant Masabi LTD’s Renewed Motion to Dismiss for Failure to State a Claim (Dkt. No. 39). Plaintiff’s Amended Complaint alleges that Masabi directly infringes the asserted patents through their use and sales of “visual validation mobile ticketing applications and systems including . . . the Masabi-NICE gomobile and Masabi-mticket MBTA.” *See, e.g.,* Am. Compl. ¶ 22, Dkt. No. 36. Plaintiff’s allegations concerning indirect, induced, and contributory infringement similarly identify specific applications and state that Masabi encouraged customers to use the accused applications. *See, e.g., id.* ¶¶ 23-25. Finally, Plaintiff alleges that Masabi’s infringement has been willful because Plaintiff had “full knowledge” of the patents. *See, e.g., id.* ¶ 29.

Such facts, if true, plausibly give rise to the alleged claims. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *Lyda v. CBS Corp.*, 838 F.3d 1331 (Fed. Cir. 2016); *Panoptis Patent Mgmt., LLC v. Blackberry Corp.*, No. 216CV00059JRGRSP, 2017 WL 780885 (E.D. Tex. Feb. 10, 2017). Masabi’s arguments to the contrary are not persuasive. Accordingly, it is RECOMMENDED that Masabi’s motion to dismiss be denied.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this report within fourteen days after being served with a copy shall bar that party from de novo review by the district judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings, and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 28th day of April, 2017.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE